



GOBIERNO DE PUERTO RICO  
DEPARTAMENTO DEL TRABAJO Y RECURSOS HUMANOS

September 15, 2000

**Re: Inquiry No. 14813**

This is in reply to your inquiry pertaining to Act No. 180 of July 27, 1998, Puerto Rico's Minimum Wage, Vacation and Sick Leave Law, and to Mandatory Decree No. 42, applicable to the Retail Trade Industry, Tenth Revision (1991).

As you point out, Article IV, Section B of Mandatory Decree No. 42, *supra*, provides for sick leave accrual at a rate of 1¼ working days for each month in which the employee has worked at least 120 hours. The decree also provides for sick leave accrual at the rate of ¾ of a working day in the case of employees who work fewer than 120 hours per month, but at least 80 hours; and for *pro rata* accrual at the rate of ¾ of a working day for each 80 hours worked in the case of employees who work fewer than 80 hours per month.

When Act No. 180, *supra*, was subsequently enacted, Article 6(a) provided for the accrual of vacation leave at the rate of 1¼ working days and 1 day of sick leave for each month in which the employee has worked at least 115 hours. Although not mentioned in your inquiry, the accrual rate for vacation leave under the Act is identical to the equivalent provision under Article IV, Section A, of Mandatory Decree No. 42, *supra*, except that the decree requires the employee to work 120 hours, while the Act requires only 115.

On the other hand, the mandatory decree provides that unused sick leave at the end of the year is accrued for subsequent years up to a maximum of 30 days, whereas Act No. 180, *supra*, limits such accrual to a maximum of 15 days.

As you state, it is your interpretation that employees hired prior to August 1, 1995 are covered by the vacation and sick leave provisions of the mandatory decree; whereas those

hired after that date are subject to the equivalent provisions of Act No. 180, *supra*, with its lesser sick leave benefits. The purpose of your inquiry is to request confirmation of your interpretation.

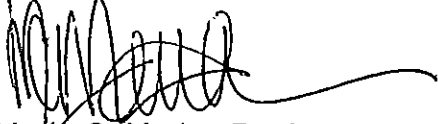
Your interpretation is partially correct. As set forth under Article 5(b) of Act No. 180, *supra*, employees hired prior to August 1, 1995 and covered by mandatory decrees that provide higher vacation and sick leave benefits will continue to be entitled to said higher benefits as long as they continue to work for the same employer. This happens to be the case under Mandatory Decree No. 42, *supra*, which grants higher sick leave benefits. Where such mandatory decrees apply, employees hired after August 1, 1995 will be subject to the vacation and sick leave benefits provided under Article 6(a) of Act No. 180, *supra*.

On the other hand, Article 5(c) of the Act provides that industries covered by mandatory decrees with lesser vacation and sick leave benefits will continue to be subject to the lesser benefits provided under the mandatory decree until such time as the decree is amended to conform to the higher vacation and sick leave provisions of the Act. Note that in such industries the vacation and sick leave benefits of the mandatory decree remain in effect for all nonexempt employees, regardless of whether they were hired before or after August 1, 1995.

In addition, Article 6(j) of the Act provides that unused sick leave remaining at the end of the year will be accrued for subsequent years up to a maximum of 15 days. That provision repeals the 30-day maximum accrual under the mandatory decree. It should be noted that in an effort to discourage absenteeism many employers have chosen to set up voluntary programs that offer cash payouts for unused sick leave in excess of the new 15-day limit.

We trust the foregoing is responsive to your inquiry.

Cordially,



María C. Marina Durán  
Solicitor of Labor